Supreme Court, U. S.
FILED
AUG 4 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 75-1064

JACK B. KREMENS, Individually and as Hospital Director of Haverford State Hospital; FRANK S. BEAL, Individually and as Secretary of Public Welfare of the Commonwealth of Pennsylvania; WILLIAM B. BEACH, JR., Individually and as Deputy Secretary for Mental Health and Mental Retardation of the Department of Public Welfare of the Commonwealth of Pennsylvania, -
Appellants,

v.

KEVIN BARTLEY; STEVE GENTILE; LESLIE LEVINE; VICKI MATHEWS; MARK WEAND; Minors, Through Their Next Friend, Individually and on Behalf of All Others Similarly Situated,
Appellees.

Appeal from the Judgment of the United States District Court for the Eastern District of Pennsylvania

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEES

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STATEMENT OF INTEREST OF AMICUS CURIAE

The National Juvenile Law Center is a national legal services organization established by the Office of Economic Opportunity (now the Community Services Administration) and funded by a grant to the Saint Louis University School of Law. The function of the National Juvenile Law Center is to work on behalf

of poor persons for reform in the area of juvenile law and the rights of young persons, and to provide assistance to Legal Services Programs, Public Defenders and private attorneys engaged in representing poor persons in juvenile law and related matters. The attorneys employed by the Center also act from time to time as *amicus curiae* in matters of substantial public interest and importance.

Counsel for *amicus* are familiar with the questions involved in this case and believe that it is essential that an additional argument in support of the position of appellees be brought to the attention of this Court.

The National Juvenile Law Center takes an interest in this case because of the importance to the child of the parents' decision to seek his or her commitment to a mental hospital. In addition *amicus* believes that the issues before this Court are substantial and critically affect the public interest and the interest of young persons in general.

SUMMARY OF THE ARGUMENT

Children possess certain rights which belong to them personally. They possess these rights, however, in the context of the family unit. Parents have rights arising from the parent-child relationship which give them the ability to manage the affairs of the family, including guiding the decisions made by the child. A parents' rights do not, however, give them unfettered control over the child.

When the parent and child find themselves in a situation where their natural alliance is merely an illusion, the parent may no longer be permitted to exercise authority over a decision made by the child concerning any of the child's personal rights. Because of this conflict of interests, the parent cannot act in an unbiased manner, and therefore, may not be permitted to waive a child's rights.

I. ARGUMENT

In Transactions Affecting Fundamental Interests of the Child Where the Interests of the Parent and Child Conflict, the Parent May Not Waive Rights Belonging to the Child.

It has been recognized that children possess certain rights. As this Court has stated: "Constitutional rights do not mature and come into being magically when one attains the state-defined age of majority. Minors as well as adults, are protected by the Constitution and possess constitutional rights." *Planned Parenthood of Central Missouri v. Danforth*, — U.S. —, — S.Ct. —, 44 LW 5197, 5204 (1976). In a line of cases, this Court has extended the protection of certain rights to children in proceedings that could result in confinement in an institution. *See, e.g., Kent v. United States*, 383 U.S. 541 (1966), the right to a hearing on the issue of transfer from the juvenile to the criminal justice system; *In re Gault*, 387 U.S. 1 (1967), the rights to counsel, to present evidence, to cross-examine witnesses, and to notice of the charges; *Breed v. Jones*, 421 U.S. 519 (1975), the right not to be twice put in jeopardy for the same offense. In other situations where the child is found to have a constitutionally cognizable interest, procedural protections have been extended to the child: *Goss v. Lopez*, 419 U.S. 565 (1975), hearing required before a student can be suspended or expelled from school; *Tinker v. Des Moines School District*, 393 U.S. 503 (1967), first amendment freedom of expression applies to children in school.

Children do not possess these rights in a vacuum, but rather exercise these rights in the context of the family unit. Parents may exercise a veto power over a child's decision in certain situations. *Cf. Planned Parenthood Assoc. of Central Mo. v. Danforth, supra.* A parent's right to the companionship and management of his children is one of those liberties, having a basis in

natural law, around which evolved strict constitutional protections. This Court has frequently emphasized the importance of parental rights, deeming it essential, *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923); and recognizing it as one of the "basic liberties", *Skinner v. Oklahoma,* 316 U.S. 535, 541 (1942), and a right "far more precious . . . than property rights," *May v. Anderson,* 345 U.S. 528, 533 (1953). The basic integrity of the family unit is protected not only by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, *Meyer v. Nebraska, supra* at 399, but also by the Equal Protection Clause of the Fourteenth Amendment, *Skinner v. Oklahoma,* supra at 541, and the Ninth Amendment, *Griswold v. Connecticut,* 381 U.S. 479, 496 (1965) for Goldberg, J., concurring.

Despite the highly protected nature of parental rights, the state may intervene in certain circumstances to protect the child from parental behavior. *See, e.g., Prince v. Massachusetts,* 321 U.S. 158 (1944); *In re Trapp,* 528 S.W.2d 489 (Mo. App. 1975); *Hull v. Hull,* 332 S.W.2d 758 (Tex. Civ. App. 1960); *In re Vulon Children,* 288 N.Y.S.2d 203 (Fam. Ct. 1968); *In re Green,* 286 A.2d 681 (Pa. Super. 1971); *In re Neglected Children,* 276 A.2d 14 (Vt. 1971).

In these situations, a conflict exists between the parent and the child. In some circumstances, it may be presumed that a child's parents as his natural guardians are best suited to advocate his interests. However, where the parents' nonfeasance or malfeasance is the subject of the litigation and their fitness as parents is being adjudicated, this presumption can no longer prevail. In *Stapleton v. Dauphin County Child Care Service,* 324 A.2d 562 (Pa. Super. 1974), where parental fitness is in issue, the court found a conflict to exist between a parent or guardian and the child when a resolution of the issue involved a determination of the child's "best interests", and held that the parent cannot waive the child's right to counsel in this situation.

The conflict between parent's right to the care and control of the child and the child's right to self-determination may also be present in delinquency proceedings. For example, this Court has held that there is a right to counsel in a delinquency proceeding in which the juvenile is subjected to the possible loss of liberty by commitment to an institution. *In re Gault, supra.* Where there is a right to counsel, a critical issue is whether that right can be waived, and if so, by whom and under what circumstances. An important problem related to this issue concerns the relationship of the child's parents to this process and their ability to waive counsel for the child. A corollary to this critical question is the capacity of the child to make a knowing and intelligent waiver of the right to counsel (or any right), according to the standards employed to judge an adult waiver. See *Johnson v. Zerbst,* 304 U.S. 458 (1938). Many children lack the degree of sophistication required to assure that the waiver is a knowing and intelligent decision. For this reason, they require the advice and assistance of an adult. However, since the right to counsel is one belonging to the child, the child alone should make the decision. When the parent steps out of the role of advisor, the parent must be barred from interfering in the child's decision.

Even though constitutional rights are of great importance, they may be waived; however, only the person entitled to the right may make an effective waiver. In *K.E.S. v. State,* 216 S.E.2d 670 (Ga. App. 1975), the child's mother had filed complaints with the juvenile court on three occasions stating that her daughter was unruly. At a probation revocation hearing where the child was entitled to be represented by counsel, the court found that the mother's waiver of her daughter's right was ineffective. Under the circumstances of this case, the court stated that the mother and daughter clearly had conflicting interests, and further stated that "the mother who waives the child's right must be an unbiased mother, free of interests conflicting with the needs of her daughter . . . The mother's waiver of

counsel, here, therefore, is not binding upon the child." 216 S.E.2d at 673.

Other courts have reached similar conclusions. In *Commonwealth v. Starkes*, 335 A.2d 698 (Pa. 1975), a minor's confession was suppressed after the court found that the confession was obtained due to the influence exerted by the child's parent who had not been informed of the consequences of making such a statement. *See also: Bridges v. State*, 299 N.E.2d 616 (Ind. 1973); *McBride v. Jacobs*, 247 F.2d 595 (D.C. Cir. 1957); *Shioutakon v. Dist. of Columbia*, 236 F.2d 666 (D.C. Cir. 1956).

Legislatures of various states have recognized that this conflict of interest exists and have responded by enacting provisions in the state's juvenile code to remedy this problem. A number of statutes deal indirectly with the waiver of rights issue by requiring separate counsel for the parent and child where a conflict is found to exist. *See, e.g.*, Ariz. Stat. § 8-225 (1974); Minn. Rules of Juv. Ct. Rule 2-1(4); N.D. Cent. Code § 27-20-26 (1960); Ohio Rev. Code § 21.51.352 (1971); Vt. Stat. Ann. tit. 33 § 653 (1959); Tenn. Code Ann. § 37-226 (1974); Cal. Welf. & Inst'ns. Code § 634 (1972); Mo. Rules of Juv. Ct. Rule 116(g); Pa. Stat. Ann. tit. 11 § 50-317 (1965). Separate counsel is employed in this situation in order to independently evaluate and advocate the interests of the parties and to objectively offer advice. A parent, although presumably the protector and ally of the child, cannot serve in that capacity since the tensions produced by the conflict bias his ability to act as an advisor. *See, K.E.S. v. State, supra.* One state has not only recognized that the conflict exists, but has legislated that the parent may not waive any right belonging to the child. Ky. Rev. Stat. § 208.060(3)(e) (1974). Legislative activity in the form of bills pending before state houses, lends additional recognition to the existence of the parent-child conflict by explicitly providing that the parent may not waive a child's right. *See, e.g.,*

Wash. S.B. 2232 (1975); Wash. H.B. 496 (1975). *See also, Piersma*, Ganousis and Kramer, *The Juvenile Court: Current Problems, Legislative Proposals, and a Model Act*, 20 St. L. U. L. J. 1, 30, 92 (1975).

Thus, the role parents play at proceedings in which their children are involved is that of an advisor. In this capacity, the parent's duty is to assess the situation, serve as a buffer against the coercive nature of the surroundings, and offer advice and assistance to the child, so that the child can decide whether to waive his rights. The parent is not present to make decisions for the child nor to waive any right belonging to the child. Often the child is before the court due to parental initiation of the proceedings, *e.g.*, filing of a petition alleging that the child is beyond control, or that the child requires care because of a mental or emotional disorder. It has been shown that in such a situation the parent and the child are adversaries, not allies. *K.E.S. v. State, supra.* To permit the parent to file charges and then to waive the child's right at any subsequent stage of a proceeding arising from the charge is grossly unfair.

Permitting separate counsel for the child and prohibiting parental waiver in these circumstances will neither disrupt the family unit nor diminish parental authority. Certain rights have been guaranteed to the minor by federal and state law. The government may not abridge the exercise of these rights nor coerce any person into waiving the protection the rights guarantee. To allow a parent to waive the right for the child is tantamount to delegating authority over another person's rights to the parent. Such authority is beyond the normal scope of parental decision-making. See, *e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In a similar case, this Court refused to permit a parent to exercise a veto over a minor's decision to have an abortion, recognizing that the "minor and the nonconsentive parent are so fundamentally in conflict . . ." *Planned Parenthood of Missouri v. Danforth, supra*, at 5204.

II. CONCLUSION

It is, therefore, submitted that despite a parent's legitimate interest in the preservation of the family unit through the exercise of authority over a child's decision, a parent may not be permitted to waive the child's rights at any stage of a proceeding in which they are involved. The child personally possesses constitutional rights and has the ultimate right to exercise or to waive them. The parent, as the child's ally, should serve as an advisor and assist the child in reaching an informed decision. Whenever the parent becomes the child's adversary, in those situations where a conflict of interests exists, the parent may not be permitted to interfere with the exercise of a child's constitutionally protected rights.

Respectfully submitted

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Certificate of Service

I, Michael A. Wolff, Counsel for Amicus Curiae, do hereby certify that I have served by United States Mail, postage prepaid, first class, on this date, August 2, 1976, three copies of Appellees' Brief for Amicus Curiae to Norman J. Watkins, Deputy Attorney General, Counsel for Appellants, at Department of Justice, Capitol Annex, Harrisburg, Pennsylvania, 17120. I further certify that all parties required to be served in this appeal have been served.

MICHAEL A. WOLFF
Counsel for Amicus Curiae